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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1603

HELEN WILLS STRONG and KEARNEY-NATIONAL, INC., *Petitioners*

v.

GENERAL ELECTRIC COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners, Helen Wills Strong and Kearney-National Inc., pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in the above-entitled case.

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals is reported at 434 F.2d 1042 (5th Cir., 1970) and is reprinted in Appendix (p. 2a). The opinions of the District Court for the Northern District of

Georgia are reported at 305 F. Supp. 1084 and 1089 and were adopted *in toto* by the Court of Appeals. They are reprinted in the Appendix as part of the Court of Appeals decision, which added only a brief paragraph to them (p. 3a to p. 13a).

JURISDICTION

The judgment of the Court of Appeals was entered on December 8, 1970 (Appendix p. 14a). A timely Petition for Rehearing and Petition for Hearing En Banc was denied on January 21, 1971 (Appendix p. 15a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1). The basis of jurisdiction in the District Court was 28 U.S.C. Sections 1332 and 1338.

QUESTIONS PRESENTED

(a) As to the Certiorari Policy

Should not this Court, after years of silence, determine

(1) Whether the "best evidence" rule is no longer viable, and

(2) Whether the giving of an invented article in incomplete form, for trial and approval only, more than one year prior to the filing of a patent application, constitutes a public use or on sale within the purview of Section 102(b) of the Patent Act of 1952.

(b) On the Merits

The patents in suit, relating to meter boxes, are U.S. Patent No. 3,123,744 owned by Petitioner Kearney-National Inc., (hereinafter referred to as the "Fisher Patent") and U.S. Patent No. 2,991,398 owned by Petitioner Helen Wills Strong, widow of the de-

ceased inventor, Carll W. Strong (hereinafter referred to as the "Strong Patent") and under which Petitioner Kearney-National Inc. is an exclusive licensee.

The questions presented on the merits are:

(1) Whether a "blown-up" photographic copy of a page of a publication indistinctly disclosing what respondent alleges to be the subject-matter of the patent in suit constitutes the "best evidence" where no excuse has been offered for failure to produce the original, admittedly in existence.

(2) Whether *Marconi Wireless Telegraph Co.* v. *United States,* 320 U.S. 1 (1943) was meant to be applied posthumously to convict a deceased inventor of fraud when he cannot defend himself and his widow does not have the information to do so.

(3) Whether there is no distinction between a gift and a sale of the subject matter of an invention under 35 U.S.C. Section 102(b) in spite of the express language of "on sale" of that section and absence of any mention of "on gift" therein.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves Article I, Section 8, Clause 8 of the Constitution, and Sections 101 and 102, of the Patent Act of 1952, 35 U.S.C. Sections 101 and 102. (Appendix, p. 1a to 2a).

INTRODUCTORY STATEMENT

To the best of petitioner's knowledge and belief, this Court has never affirmed its adherence to the "best evidence" rule in any civil case. It has never given the Courts of Appeals a ruling on what constitutes "public

use or on sale" within the purview of Section 102(b) of the Patent Act of 1952 (35 U.S.C.).

Analysis of prior opinions indicates this neglect has caused considerable diversity of opinion in the Courts of Appeals as to what constitutes "public use or on sale", culminating in the adherence of the Court below to a District Court decision that a gift is the same as a sale under Section 102(b).

The Chief Justice of this Court, the Honorable Warren E. Burger has voiced publicly his concern with the burdensome and crowded dockets of our Courts. This case furnishes an ideal opportunity for the Court, by granting certiorari, to contribute to the diminution of such dockets by stating authoritatively what constitutes public use or on sale in patent causes, and by reaffirming the viability of the "best evidence" rule.

In addition, this Court has made no further statement of law since *Marconi* in 1943, and thus it has been enlarged by the lower courts to cover a situation to which this Court never intended it should be applied.

STATEMENT OF FACTS

1. The "Best Evidence Rule" Ignored—Electrical South Publication

As proof of invalidity of the Strong patent, the Courts below accepted as evidence, over strenuous objections of petitioners' counsel, an indistinct high enlargement low resolution "blow-up" of an article in complete disregard of the "best evidence rule" (See IV Wigmore On Evidence, 3d, ed. Section 1178). Petitioners' counsel requested the original from which the enlargement had been made. Counsel for respondent

admitted the existence of the original but refused to produce it and made no excuse for failure of production. Petitioners' motion to strike this evidence for failure to comply with the "best evidence rule" was overruled by the District Court.

In its decision filed June 13, 1969 (p. 3a, to p. 10a), the District Court solved the problem that obviously the Electrical South publication was not the best evidence in a simple manner: it disregarded it. The Court of Appeals, after granting but 15 minutes for oral argument, wrote a one-paragraph decision, adopted the District Court's decisions, and forgot the matter. Unless this Court will apply resuscitation, the "best evidence rule" is apparently dead in the Fifth Circuit, and any photocopy, however indistinct or altered, is readily acceptable. If the alteration is fraudulent, that is just the chance a litigant in the Fifth Circuit takes.

2. The Law of Marconi Wireless Telegraph Co. Was Improperly Applied

As a final degradation resulting from the acceptance of the indistinct photograph, *supra,* the lower courts said that certain claims of the Strong patent were invalid under *Marconi Wireless Telegraph Co., supra.* Since in *Marconi* fraud was found, the lower courts were holding Carll Strong a criminal 13 years after his death. If so, the courts committed error of law in improperly applying *Marconi,* which is not apposite to the facts surrounding the Electrical South publication.

In Marconi the patentee, Fleming, had written a paper in 1890 attributing a certain invention to others. That invention was later embodied in certain claims of his patent. He received his patent in 1905 and in 1915

his assignee, Marconi, disclaimed the invention of those claims. This Court held at pp. 58 and 59 of 320 U.S.:

> "Fleming's paper of 1890 showed his own recognition that his claim of use of his patent for low frequency currents was anticipated by Edison and others. It taxes credulity to suppose, in the face of this publication, that Fleming's claim for use of the Edison tube with low frequency currents was made 'through inadventence, accident or mistake', which is prerequisite to a lawful disclaimer. No explanation or excuse is forthcoming for his claim of invention of a device which he had so often demonstrated to be old in the art, and which he had specifically and consistently attributed to Edison. Nor is any explanation offered for the delay of the patentee—the Marconi Company—in waiting ten years to disclaim the use of the device with low frequency currents and to restrict it to a use with high frequency Hertzian waves which Edison had plainly foreshadowed but not claimed."

It is believed apparent that *Marconi* was incorrectly applied. Here there was no recognition by inventor Carll Strong that another had made his invention, nor a disclaimer filed. On the contrary, the petitioners contend and still believe that Electrical South did not disclose the subject-matter of the Strong patent. As far as an explanation or excuse is concerned, Carll Strong is not able to give one. Carll Strong died December 17, 1956, long before the present action originated, and in fact, well prior to respondent's first infringement of his patent. So the lower courts have coupled an indistinct photographic copy of a page from a publication to the *Marconi* case in which the accused could have but did not come forth to explain an incongruity, to condemn a deceased inventor with a fraudulent, criminal act.

3. An Error of Law Was Committed in Equating "Gift" With the Statutory Language "on Sale" of Section 102 (b).

(a) Background

The litigation concerns the field of meter boxes, sometimes referred to here as meter sockets. When used to hold socket-type electric meters, they form an enclosure with electrical connections leading to jaws into which the meter is thrust. *The meter box is in use when it holds a meter and is attached to a house or other structure in which electricity is utilized.* The Strong patent is a basic patent in this field and some knowledge of its structure is requisite to an understanding of this appeal. The Fisher patent is an improvement patent on the Strong invention; because of the basis on which it was held invalid, no knowledge of its structure is requisite.

The Fisher patent was held invalid on summary judgment on one basis only—that the subject matter thereof had been in public use and on sale to Duke Power Company more than one year prior to the filing of the patent. As the application for the Fisher patent was filed in United States Patent Office on April 4, 1962, the critical date for establishing public use or on sale was April 4, 1961.

Petitioners have always admitted that between March 27 and 31, 1961, Sam Crowe, president of the first licensee, B & C Stamping Company, visited the Duke Power Company at Charlotte, North Carolina. Mr. Crowe left samples of meter boxes according to the Fisher patent with Duke Power without receiving compensation or the expectation of same.

What happened to the samples after Sam Crowe left them with Duke Power and more specifically in

the period of one week or 10 days between the time he left the boxes and the statutory bar date? Without doubt, there came a time when Sam Crowe's samples were tested by Duke Power to determine by trial whether they met Duke Power's standards. *From the record, we cannot tell whether that happened between March 27, 1961 and April 4, 1961, the critical date, or after the critical date.* Without doubt, the Fisher meter box was ultimately placed on Duke Power's approved list, but the record does not show when that occurred. There is nothing in the record that shows a sale of these meter boxes to Duke Power and the Courts below never held they were sold. *Nevertheless, despite the fact the sample boxes were incomplete and without meter attachments, the empty boxes were deemed by the Courts below to be in public use and on sale to Duke Power between March 27, 1961 and the critical date of April 4, 1961, equating gift and sale contrary to the statute.*

The Strong patent No. 2,991,398 issued on July 4, 1961 on an original application filed May 5, 1952, the critical date is May 5, 1951, one year prior to the filing date of the application. For present purposes, it is not necessary to point out all the advantages of the Strong structure. Carll Strong invented a *ringless, gasketless* meter box, a useful and novel improvement over the prior art, which formerly utilized a separate sealing ring, or a gasket of cork or rubber between the box cover and the base of the meter.

The facts regarding Georgia Power's possession of Strong meter boxes are almost identical to the facts surrounding Duke Power's possession of Fisher meter boxes, *supra.* In both instances the samples were given without compensation or the expectation of same.

In its Order granting Summary Judgment, the lower courts did not dispute the patent owners contention that Sam Crowe gave the sample meter boxes to Duke Power and did not sell them. That the Court had to do because there was no evidence of a sale. The Court, however, equated gift and sale, stating at (p. 12 a):

> "Plaintiffs contend that the boxes were *given* rather than *sold* to Duke Power and that a gift does not invalidate a patent under 35 U.S.C. § 102 (b). That contention is utterly without merit. An inventor may not prolong the statutory period of monopoly by any means whatever and it matters not one iota whether he seeks to do so by 'giving' the invention away instead of by selling it—the result is the same, *i.e.*, if he does so more than one year before applying for his patent he loses any right he might otherwise have had to patent the invention." [Original Emphasis]

It is respectfully submitted that the lower courts misinterpreted § 102(b) as a matter of law. That section specifies "on sale", not "on gift". This misstatement of the law casts doubt on the lower courts interpretation of § 102(b) in its entirety.

A good explanation of the rationale behind the defense of "on sale" is explained by the Court of Appeals for the Ninth Circuit in *Amerio Contact Plate Freezers, Inc.* v. *Belt-Ice Corp.*, 316 F.2d 459 (9th Cir. 1963), at page 465, as follows:

> "The purpose of the 'on sale' provision of the statute is to prevent an inventor from having the advantage of a monopoly for more than the statutory period by engaging in the competitive exploitation of his invention after it is fully developed before applying for a patent. * * *

> "Ordinarily, however, selling activity (at least activity short of actual sales) prior to the time that a fully-operative article or apparatus incorporating the invention comes into existence, is not a reliable indicium of competitive exploitation. Until at least an operative prototype has been completed and tested, the competitive effectiveness of such activity, in all probability, will be impaired by the aura of continuing developmental, experimental and testing effort. Moreover, at this stage, such activity is likely to be more for the purpose of eliciting needed changes in design and testing whether the market potential warrants continuance of the project, than to launch full-fledged commercial exploitation."

There is no evidence that petitioners engaged in any "commercial or competitive exploitation" of its meter boxes prior to the critical dates. There is no evidence that the power companies had actually used, tested, or approved the meter boxes prior to the critical dates.

4. The City of Albany Defense

Respondent attempted to establish actual sales of the Strong meter boxes to the City of Albany.

The only evidence submitted in support of this defense was two purchase orders dated prior to the critical date of May 4, 1951 bearing the indicia "WV-011". Respondent's witnesses could not identify the type of meter boxes which were the subject-matter of the purchase orders. Petitioner's witness testified that the same designation "WV-011" had been used and applied "over the years" to both ring-type and ringless type meter sockets. Resolving every doubt in favor of the patent as the law requires, there was no clear and convincing evidence of a sale to the City of Albany.

CONCLUSION

Petitioners respectfully urge the lower courts committed reversible error in failing to adhere to the "best evidence rule", in misconstruing and misapplying *Marconi Wireless Telegraph Co., supra.,* and the law of public use, on sale and anticipation of 35 U.S.C. Section 102(b).

For the reasons stated, this Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

Constitutional and Statutory Provisions

1. Article I, Section 8, Clause 8, of the Constitution provides:

> The Congress shall have Power . . .
>
> * * * * * * * * * *
>
> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. . . .

2. Sections 101 and 102 of the Patent Code of 1952 provide (35 U.S.C. §§ 101-02):

§ 101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

§ 102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless—

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country more than one year prior to the date of the application for patent in the United States, or

(c) he has abandoned the invention, or

(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application filed

more than twelve months before the filing of the application in the United States, or

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or

(f) he did not himself invent the subject matter sought to be patented, or

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29148

HELEN WILLS STRONG and
KEARNEY-NATIONAL, INC.,
Plaintiffs-Appellants,

versus

GENERAL ELECTRIC COMPANY
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia

Before THORNBERRY, GOLDBERG and AINSWORTH,
Circuit Judges.

(December 8, 1970)

PER CURIAM: This is an appeal from the district court's judgments in appellants' suit for infringement of two patents. We AFFIRM the orders appealed from, and adopt and affirm the district court's cogent opinions, copies of which are attached hereto.

Filed June. 13, 1969

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 9508

Order

This is an action for injunctive relief, treble damages, costs, and attorney's fees, arising out of defendant's alleged infringement of two of plaintiffs' meter box patents, *i.e.*, (1) United States Patent No. 3,123,744, which is owned by Plaintiff Kearney-National, Inc., and (2) Patent No. 2,991,398, which is owned by Plaintiff Strong and under which Kearney-National is exclusive licensee. Since no evidence was introduced with regard to infringement of Patent No. 3,123,744 (the Fisher patent), all issues to be decided at this time are concerned with Patent No. 2,991,398 (hereinafter referred to as the Strong patent or Strong meter box).

The record shows that the Strong patent was applied for by Carll W. Strong on May 5, 1952, and was issued to his widow, Helen Wills Strong, as his successor in interest, on July 4, 1961. An exclusive license was granted by Mr. Strong to B & C Metal Stamping Co. of Atlanta in 1952 shortly after the patent application was filed, and some years later the license was transferred to Kearney-National. The record further shows that Defendant General Electric Company has produced meter boxes which, if the Strong patent is valid, appear to infringe upon that patent or at least upon certain of the claims contained therein.[1]

Defendant contends, however, that the Strong patent is invalid under 35 U.S.C. § 102(b) and § 103. Invalidity under § 102(b) is predicated upon the ground that more than

[1] In view of the conclusions reached on the question of patentability, the court finds it unnecessary to decide the infringing character of defendant's device.

one year prior to the date upon which the patent application was filed the Strong meter box allegedly (1) was in public use by persons other than the inventor; (2) was on sale within the meaning of § 102(b); and (3) was described in a printed publication—*Electrical South*—with sufficient clarity to enable one skilled in the art to produce the meter box which subsequently was claimed in the patent. Any one of these allegations, if proven, would serve to invalidate the patent. Furthermore, defendant contends that the patentee's failure to disclose the *Electrical South* publication to the patent office as part of the pertinent prior art constituted fraud upon the patent office and therefore invalidates all claims included in the patent, even if some of the claims otherwise would be valid.

Additionally, defendant alleges that even if the prohibitions of § 102(b) had not been violated the "invention" claimed by Carll Strong did not meet the "nonobvious" requirement imposed by § 103[1a] and therefore would have been unpatentable.

Patents issued by the United States Patent Office are, of course, presumed to be valid, but this presumption is a rebuttable one. A patent may be invalid for failing to meet any one of the requirements set forth in 35 U.S.C. §§ 101-103. Although § 103 was asserted as a ground of invalidity in the present case, the allegations and arguments were directed primarily toward § 102(b), which provides that an applicant has no right to patent an invention if more than one year before the date of the patent application the invention for which a patent is sought was in public use or on sale in this country or was described in a printed publication in this country or abroad.

[1a] 35 U.S.C. § 103 sets forth as one condition of patentability the requirement that the thing to be patented must be something which would not be obvious to one skilled in the art, considering the prior art exists at the time the patent is applied for.

The court finds that the invention claimed in the Strong patent was in fact in public use and on sale within the meaning of 35 U.S.C. § 102(b) for more than one year prior to the filing of an application for patent and that the patent is therefore invalid. Furthermore, the court finds that Claims 1, 2, and 3 of the patent were disclosed in the *Electrical South* publication in 1949 and that the applicant's failure to disclose that publication as part of the prior art brings the case squarely within the rationale of *Marconi Wireless Telegraph Co.* v. *United States,* 320 U.S. 1 (1943), and that the entire patent must therefore be held invalid on that ground also. In view of these findings the court does not reach the question of whether the invention claimed by Patentee Strong met the "nonobvious" requirement of 35 U.S.C. § 103, or whether any one or more individual claims met that requirement.

Public Use or On Sales. When, as in this case, a defendant in an infringement suit challenges the patent's validity on the ground that the claimed invention was in public use prior to one year before the patent was applied for, that defendant has the burden of showing by clear and convincing evidence that the invention was in fact used by one other than the inventor at some time prior to the one-year period permitted by the statute.[2] "[E]ven a single public use, or only a placing on sale, is sufficient to invalidate a patent under 35 U.S.C. § 102(b)." *Minnesota Mining & Mfg. Co.* v. *Kent Industries, Inc.,* 161 U.S.P.Q. 321 (6th Cir. 1969); *Tool Research & Engineering Corp.* v. *Honcor Corp.,* 367 F. 2d 449 (9th Cir. 1966), *cert. denied,* 387 U.S. 919, *reh. denied,* 389 U.S. 893 (1967). Once a prima facie case of such use has been made out, however, the burden of going forward with the evidence shifts to plaintiff, who then must show that the use was an experimental, restricted use; if the plaintiff fails to make such

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[2] Southern Implement Mfg. Co. v. McLemore, 350 F.2d 244 (5th Cir. 1965).

a showing the invention is deemed to have been dedicated to the public and therefore to be unpatentable.[3]

In this case the fact that Strong meter boxes were in Georgia Power Company's possession prior to the critical one-year statutory period (*i.e.*, prior to May 5, 1951) is not disputed; plaintiff's own witnesses have testified that dozens of the Strong meter boxes were delivered to Georgia Power prior to that date. Furthermore, the evidence specifically shows that the boxes were delivered so that Georgia Power could use them and, hopefully, add the Strong meter box to the company's approved equipment list. Plaintiffs contend, however, that this did not constitute public use because (1) it was not shown that Georgia Power used the boxes publicly; (2) the meter boxes were given—not sold—to Georgia Power; and (3) Georgia Power had to test the meter boxes before they could be approved by the company.

Even assuming arguendo that each of these three statements is true, plaintiffs' conclusion that they do not result in public use is clearly erroneous. That the public-use prohibition contained in § 102(b) refers to *any* unrestricted use by one other than the inventor, regardless of whether the user is a donee or a purchaser, is an elementary principle of patent law which is no longer open to question. It makes no difference whatever whether the invention was used in the "public eye" or not, or whether the user acquired it by gift or by sale.[4]

Plaintiff's own evidence shows (1) that the Strong meter boxes were delivered to Georgia Power for *use*, and (2)

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[3] FMC Corp. v. F. E. Myers & Bro. Co., 384 F.2d 4 (6th Cir. 1967), *cert. denied*, 390 U.S. 988 (1968); Atlas v. Eastern Air Lines, Inc., 311 F.2d 156 (1st Cir. 1962).

[4] Egbert v. Lippman, 104 U.S. 333 (1881); FMC Corp. v. F. E. Myers & Bro. Co., *supra* n.3; Tool Research & Engineering Corp. v. Honcor Corp., *supra;* Cloud v. Standard Packaging Corp., 376 F.2d 384 (7th Cir. 1967).

that no conditions of secrecy were imposed upon Georgia Power with regard to those boxes. Any use to which that company put the boxes was therefore an unrestricted use. Furthermore, even though Georgia Power announced that it must test the meter box before it could be put on the company's approved list, there is nothing to suggest that this testing was required in order to perfect or improve the meter box, or in order to demonstrate that it was marketable. Rather, Georgia Power's tests were purely and simply to determine whether Georgia Power liked the Strong meter box. The evidence clearly shows that B & C Metal Stamping Co. (the first exclusive licensee) considered the Strong meter box to be marketable and was in fact making great efforts to sell the boxes to Georgia Power and to others as well.

Furthermore, there was evidence tending to show that the City of Albany purchased ringless meter boxes from B & C in June, 1950, and again in February, 1951, and undisputed evidence showing that B & C never manufactured and sold ringless meter boxes other than those of the Strong patent type. The court finds that B & C did in fact sell Strong meter boxes to the City of Albany more than one year before the Strong patent application was filed and that it delivered meter boxes to Georgia Power Company to be used in whatever manner that company chose without restriction. The court holds, therefore, that either the City of Albany or the Georgia Power Company transactions would be sufficient to establish that the Strong meter boxes were on sale as well as in public use prior to May 5, 1951, and that any invention claimed in the Strong patent had entered the public domain and was unpatentable at the time the patent application was filed.

Anticipation by Publication. A creation which ordinarily would be patentable either as a new creation or as an improvement upon old art is not patentable if more than one year prior to the date of application for the patent the completed invention was described in a printed

publication in such detail that any person skilled in the art could use it without further instruction. In such cases, the invention is deemed to be in the public domain and therefore not patentable. Furthermore, an otherwise patentable claim within a patent may be lost to the inventor because of fraud in the procurement of his patent. One who is sued for infringement may challenge the validity of the patent on the ground that part of the device which has been patented by the plaintiff was actually not patentable.[5] Invalidity of any part of a patent will defeat the entire patent unless (1) the invalid portion was claimed through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, and (2) is disclaimed without unreasonable neglect or delay.[6]

In the instant case the evidence shows that in January, 1949, a meter box invented by Patentee Strong was described in the publication *Electrical South* and that it was represented as having a patent pending. The evidence clearly shows that the advantages claimed for the *Electrical South* meter box are also claimed in the patent applied for more than three years later, and that the components pictured and described in that publication correspond to those covered by Claims 1, 2, and 3 of the Strong patent. Plaintiffs contend, however, that the *Electrical South* meter box did not anticipate the Strong meter box because the *Electrical South* box required a gasket for sealing while the Strong meter box does not. The court finds that this allegation is completely unsupported by the evidence; no gasket is evident in the *Electrical South* illustration and nowhere in the article is a gasket even mentioned. On the contrary, the article specifically states

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[5] Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965).

[6] Marconi Wireless Telegraph Co. v. United States, *supra* at 57; Chicopee Mfg. Corp. v. Columbus Fiber Mills Co., 165 F.Supp. 307, 314 (M.D. Ga. 1958).

that, "In this design, for which patents are now pending, the meter is sealed securely in place by the cover which rests firmly against the meter base rim." Plaintiffs would have the court assume that the *Electrical South* meter box contained a gasket merely because the description does not say "no gasket". This court cannot do.[7]

There was also evidence to show, and the court now finds as a fact, that the *Electrical South* publication was sufficiently clear to enable one reasonably skilled in the art to reproduce it and that the product so produced would have been the same meter box for which a patent was issued in 1961. The court also finds that the *Electrical South* publication was published with Mr. Strong's knowledge, if not at his request, so that his failure to include that publication as part of the prior art to be considered by the patent office invalidates all claims in the patent even if some of those claims otherwise would have been patentable.[8]

Plaintiffs contend that even if the *Electrical South* article did anticipate the Strong patent, it could not invalidate Claims 4 and 5 because those claims include "conducting fingers" which were not included in *Electrical South* and that since there is no evidence that failure to disclose prior art was intended to deceive, only those claims actually described in the publications can be held invalid.

Such an approach was rejected by the United States Supreme Court in *Marconi* and must be rejected here. Plaintiffs have suggested that the *Marconi* decision has been "overruled" by 35 U.S.C. §§ 253 and 288, which provide in essence that each claim in a patent stands alone and that some may stand even though others are invalid, but those

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[7] On the other hand, the description in *Electrical South* does not mention the conducting fingers claimed in Claim 4 of the Strong patent either, but in that case plaintiffs quite properly insist that the court cannot *assume* that conducting fingers were included in the prior publication.

[8] Marconi Wireless Telegraph Co. v. United States, *supra* n.6.

sections apply to invalid claims which are made inadvertently or by mistake and which are promptly disclaimed.[9]

The court finds that patentee in the instant case does not meet either of these requirements, and the anticipation of Claims 1-3 by the *Electrical South* publication therefore invalidates all claims in the Strong patent even if Claims 4 and 5 would otherwise have met the requirements of 35 U.S.C. §§ 101-103.

The defendant may therefore present a judgment in accordance with these findings and conclusions.

This 12th day of June, 1969.

/s/ NEWELL EDENFIELD
Newell Edenfield
United States District Judge

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[9] Actually Marconi was based on §§ 65 and 71 of the old statute—and these sections became 253 and 288 in the '52 statute. The language which states that these sections were designed to eliminate the harshness of the old law which invalidated all claims if any one was invalid refers to the sections as originally enacted (about 1870). Prior to that time *any* overclaiming invalidated a patent; these sections merely eliminated that result *if* (1) the overclaiming was due to inadvertence or mistake and (2) a prompt disclaimer was filed.

[Filed October 21, 1969]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 9508

Order

This is an action for injunctive relief, treble damages, costs, and attorneys' fees, arising out of defendant's alleged infringement of two of plaintiffs' meter box patents, *i.e.*, (1) United States Patent No. 3,123,744 (the "Fisher" patent), which is owned by plaintiff Kearney-National, Inc., and (2) Patent No. 2,991,398 (the "Strong" patent), which is owned by plaintiff Strong and under which Kearney-National is exclusive licensee.

Following a non-jury trial on the merits as to the validity of the Strong patent the court found that more than one year prior to the filing of the patent application the invention claimed therein had been (1) disclosed by publication and (2) in public use and on sale. The Strong patent was therefore held to be invalid and interlocutory judgment was entered accordingly. The case is now before the court upon defendant General Electric's motion for summary judgment with regard to the Fisher patent.

General Electric contends that the Fisher patent is invalid as a matter of law in that the invention described therein (1) was in public use and on sale more than one year before application for patent was made, (2) was described in a printed publication more than one year before the patent was applied for, and (3) did not represent a patentable improvement over prior art. The first ground is decisive and it is upon that ground that the court bases its decision, without reaching the questions presented by grounds (2) and (3).

It is undisputed that samples of the Fisher meter box were delivered to Duke Power Company for unrestricted

use in March, 1961, thirteen months before the patent application was filed on April 4, 1962. Plaintiffs contend that the boxes were *given* rather than *sold* to Duke Power and that a gift does not invalidate a patent under 35 U.S.C. § 102(b). That contention is utterly without merit. An inventor may not prolong the statutory period of monopoly by any means whatever and it matters not one iota whether he seeks to do so by "giving" the invention away instead of by selling it—the result is the same, *i.e.*, if he does so more than one year before applying for his patent he loses any right he might otherwise have had to patent the invention.[1]

Furthermore, plaintiffs admit that the samples were given to Duke Power Company for the express purpose of getting them put on Duke's approved list so that Duke would purchase boxes of that type from B & C. Plaintiffs contend that there was no price quotation at that time and that therefore the boxes were not "on sale" within the meaning of § 102(b). In support of that contention plaintiffs cite the case of *Chicopee Mfg. Corp.* v. *Columbus Fiber Mills Co.*, 165 F.Supp. 307 (M.D.Ga. 1958), as standing for the proposition that submission of samples constitutes placing on sale only if the samples are accompanied by a price quotation and only if submission of samples is the normal way of making sales in the business in question. This court does not understand that to be the law and a careful reading of *Chicopee* suggests that it does not support the proposition for which plaintiffs have cited it.

In *Chicopee* plaintiff's submission of samples of cloth to a designer in 1948 was held to constitute placing the

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[1] Egbert v. Lippman, 104 U.S. 333 (1881); FMC Corp v. F. E. Myers & Bro. Co., 284 F.2d 4 (6th Cir. 1967), *cert. denied*, 390 U.S. 988 (1968); Tool Research & Engineering Corp. v. Honcor Corp., 367 F.2d 449 (9th Cir. 1966), *cert. denied*, 387 U.S. 919, *reh. denied*, 389 U.S. 893 (1967); Cloud v. Standard Packaging Corp., 376 F.2d 384 (7th Cir. 1967).

cloth on sale,[2] even though there was no actual offer to sell, since the plaintiff "would have sold it . . . if [the designer] had indicated a willingness to buy and he would, of course, have also sold yardage goods corresponding to the sample."[3] There is no indication whatever that a price quotation was submitted to the designer along with the 1948 sample.

This court finds that Duke Power's unrestricted possession of the Fisher meter box more than one year prior to the patent application constituted a public use within the meaning of 35 U.S.C. § 102(b). The court finds further that plaintiffs submitted the Fisher boxes to Duke for the purpose of having the boxes approved—a necessary prerequisite to Duke's purchasing the boxes—and that submission of samples for this purpose constituted placing the boxes "on sale" within the meaning of § 102(b). The court therefore Holds that the Fsiher patent is invalid and defendant's motion for summary judgment is hereby GRANTED.

It Is So Ordered.

This 20 day of October, 1969.

/s/ NEWELL EDENFIELD
Newell Edenfield
United States District Judge

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[2] Chicopee Mfg. Corp. v. Columbus Fiber Mills Co., 165 F.Supp. 307, 323 (M.D. Ga. 1958).

[3] *Id.* at 320.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1970

No. 29148

D. C. Docket No. CA 9508

HELEN WILLS STRONG and
KEARNEY-NATIONAL, INC., *Plaintiffs-Appellants,*

versus

GENERAL ELECTRIC COMPANY, *Defendant-Appellee.*

Appeal from the United States District Court for the Northern District of Georgia

Before THORNBERRY, GOLDBERG and AINSWORTH, *Circuit Judges.*

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiffs-appellants pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

December 8, 1970

Issued As Mandate:

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1970

No. 29148

HELEN WILLS STRONG and
KEARNEY-NATIONAL, INC., *Plaintiffs-Appellants,*

versus

GENERAL ELECTRIC COMPANY, *Defendant-Appellee.*

Appeal from the United States District Court for the Northern District of Georgia

On Petition for Rehearing and Petition for Rehearing En Banc

(Opinion Dec. 8, 1970, 5 Cir., 1970, —— F.2d ——).

(January 21, 1971)

Before THORNBERRY, GOLDBERG and AINSWORTH, *Circuit Judges.*

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

Judgment on Decision by the Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA

Civil Action File No. 9508

JUDGMENT

HELEN WILLS STRONG; B & C METAL STAMPING COMPANY; and KEARNEY-NATIONAL, INC., *Plaintiffs*

vs.

GENERAL ELECTRIC COMPANY, *Defendant*

This action came on for consideration before the Court, Honorable Newell Edenfield, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, granting defendant's motion for summary judgment,

It is Ordered and Adjudged that the plaintiffs, Helen Wills Strong; B & C Metal Stamping Company and Kearney-National, Inc., take nothing, that the action be dismissed on the merits, and that the defendant, General Electric Company, recover of the plaintiffs, Helen Wills Strong; B & C Metal Stamping Company and Kearney-National, Inc., its costs of action.

* * * * * * * * * *

Dated at Atlanta, Georgia, this 21st day of October, 1969.

CLAUDE L. GOZA
Clerk of Court

By: HELEN D. SMITH
Helen D. Smith
Deputy Clerk

Filed and entered in Clerk's Office
this 21st day of October, 1969.

CLAUDE L. GOZA, *Clerk*

By: HELEN D. SMITH
Helen D. Smith
Deputy Clerk

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1603

HELEN WILLS STRONG and KEARNEY, INC., *Petitioners*

v.

GENERAL ELECTRIC COMPANY, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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STATUTE:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1603

HELEN WILLS STRONG and KEARNEY, INC., *Petitioners*

v.

GENERAL ELECTRIC COMPANY, *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

RESPONDENT'S STATEMENT OF THE QUESTIONS PRESENTED

The present petition presents no special or important questions. As is apparent from the carefully reasoned, detailed decisions of the trial judge which were affirmed *per curiam* and adopted by the Court of Appeals, this is and was a "fact" case. No proper questions are presented for review by this Court.

Indeed, petitioners ask this Court to review questions[1] which have been confected from an inaccurate version of the proceedings below. The petitioners' questions are utterly unrelated to the true facts of this case and simply do not involve any issue of law which was actually decided by the courts below.

Because of petitioners' inaccurate statements of what the trial court decided and what the Court of Appeals affirmed, the following statement is provided in accordance with Rule 40-3 of this Court.[2]

STATEMENT OF THE CASE

This is a patent suit, in which both Courts below held the petitioners' Strong and Fisher patents each to be invalid under the absolute rule of the patent stat-

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[1] The *first* question is a complaint that respondent offered an enlarged copy rather than an original page of an admittedly authentic publication, "Electrical South", at the trial. An identical enlarged copy had been authenticated by a Rule 36 admission prior to trial and an original volume of the publication was made available in open court during the trial. The *second* question is another version of attempts made in the Courts below to suggest sympathy for the widow of the deceased patentee Strong as an argument against acceptance in evidence of the invalidating Electrical South publication. The *third* question is framed to suggest that the trial court did not find that the boxes of the patents were "on sale" prior to the critical dates. This suggestion is entirely and obviously erroneous.

[2] Throughout this brief PX and DX followed by numerals will be used to refer to plaintiffs' and defendant's exhibits, respectively. Numerals followed by the lower case letter "a" refer to pages in the printed Supplemental Appendix which has been certified and transmitted to this court. The source, e.g. testimony, will be identified by surname of witness; Findings and Conclusions of District Court identified as "Order (date)"; Admissions identified as "Adm." etc. preceding the designation of pages in the Supplemental Appendix or, if not printed in the Appendix, by reference to the pages of the part of the record involved, e.g. R. —.

ute, 35 U.S.C. § 102(b). The earlier Strong patent was applied for on May 5, 1952. The critical date for this patent is May 5, 1951, for a printed publication of the invention, or its sale or "on sale" or public use, to invalidate the patent under the statute. The subsequent Fisher patent was applied for almost 10 years later, on April 4, 1962, and is directed to a very narrow addition or improvement to the earlier patented Strong meter box. Both the Strong and Fisher patents cover the same meter box made by petitioner Kearney-National.

Following almost 4 years of extensive pretrial proceedings, the issues of invalidity of the Strong patent were tried to the court. After a trial of six days which included: extensive testimony by officers of original plaintiff B&C Metal Stamping Company[3] who were intimately familiar with the meter boxes of both patents and B&C's early commercialization of these meter boxes; testimony of experts for both parties, testimony of officials of Georgia Power Company and the City of Albany, Georgia (early customers of B&C's patented meter boxes); testimony about official records of both Georgia Power Co. and the City of Albany; testimony about publications of admitted and unquestioned authenticity; and after extensive oral argument and full briefing, the District Court held the Strong patent in-

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[3] Petitioner, Kearney-National, Inc., bought out the original plaintiff B&C Metal Stamping Co. of Atlanta, Georgia, and the Strong and Fisher patent rights which had been asserted in this and six other suits. Five of these suits are pending but stayed awaiting final disposition of the present suit. The named petitioner, Helen Wills Strong, has no interest or obligation of expense in this litigation (Strong, 30a). Mrs. Strong did not even know about the filing of the six other suits on the Strong patent (Strong, 30a).

valid under Title 35, United States Code, Section 102(b).

Specifically, the trial court found that in violation of the absolute rule of this statute, more than one year before the May 5, 1952 filing date of the application for the Strong patent, the alleged meter box invention thereof was: (1) Placed on sale to Georgia Power by B&C's own officers; (2) Placed in public use by Georgia Power; (3) Placed on sale and actually sold to the City of Albany by plaintiff B&C; (4) Placed in public use by the City of Albany; and (5) Described in the printed publication Electrical South in January, 1949 (Order, June 12, 1969, 15-22a). These are absolute defenses and any one proscribed activity, a publication, a placing on sale, a sale, *or* a public use more than one year prior to the patent application is alone sufficient to invalidate a patent monopoly.

After the Strong patent had been declared invalid and in order to avoid another expensive trial with respect to the secondary Fisher patent which is concerned with only minor additions to the meter box of the Strong patent and because the pattern of plaintiffs' commercial activities had already been established conclusively by testimony at the trial by petitioners' own admissions, respondent moved for summary judgment of invalidity of the Fisher patent. The motion for summary judgment was based on the same statutory grounds which had been fatal to the Strong patent, i.e., that the Fisher patent was invalid under 35 U.S.C. § 102(b) because of B&C's own commercialization by offers for sale and delivery to customers (the Duke Power Company) more than one year before the April 4, 1962 Fisher application date.

Having heard many hours of testimony in open court from Fisher, the patentee of the Fisher patent and the officer of B&C most intimately familiar with both the Strong and Fisher patents as well as the testimony of Crowe, President of B&C in charge of meter box sales, the trial court was entirely familiar with the simple meter box subject matter as well as the pattern of B&C's usual commercial activities. Indeed, at the six-day trial on the Strong patent, the testimony of Mr. Crowe established that it was customary commercial practice in selling meter boxes to solicit trade from prospective utility customers by submitting samples of such meter boxes to secure their approval so that the seller will be placed on the utilities' approved list (Crowe, 113a-116a).

After full briefing by both parties, the trial court held the Fisher patent invalid because meter boxes of the Fisher patent had been placed "on sale" and in "public use" more than one year before the Fisher patent application had been filed, in violation of 35 U.S.C. § 102(b). This was the same statutory ground as had been the basis for holding the Strong patent invalid. Specifically, the courts below based their holding of invalidity of the Fisher patent on admissions by petitioners that meter boxes of the Fisher patent had been delivered by B&C's chief salesman Crowe to Duke Power Company prior to the April 4, 1961 critical date for the purely commercial purpose of having the Fisher meter boxes put on Duke Power's approved list so that Duke would purchase such boxes from B&C.

The structure of the patented meter boxes is simple and easily understood.

The Strong Patent

As previously noted, the application for this patent was filed May 5, 1952; hence the critical date, one year prior to the filing date, is May 5, 1951.[4]

As best seen in Figure 1 of the patent drawings (117a), the alleged invention of the Strong patent is nothing more than a box having a lid or cover with a hole in it, through which a conventional meter glass enclosure 16 can extend so that the meter can be seen, and hence read, without removing the cover. The hole in the cover is a little bit larger than the protruding glass of the meter, so that the upper edge of the cover can be slipped up under the lip 24 of the top of the box, with the cover tilted (as in Figure 1), and then swung downwardly over the glass meter enclosure and latched by the elements 29, 29′.

The box is constructed of a depth such that the rim or edge of the hole in the cover rests against the conventional enlarged base or rim 15 of the meter (called "the extended flange" in the Strong patent). When the cover is closed downwardly and latched, it holds and locks the meter in place.

This is simple hardware of the most obvious kind.

The electrical meter has conventional socket blades on its rear face so that it can be plugged into terminals mounted on the back of the box just like any other electrical connection is plugged into a socket. Then the cover is applied and latched to lock or seal the meter in place. When the meter is to be removed, the cover is taken off the box. Then the meter can be unplugged

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[4] The Strong patent is reproduced at pages 117-119 of the Supplemental Appendix as Plaintiffs' Exhibit 1, R. 2762.

and taken out just like you can take any other instrument out of a box in which it is mounted after removing the cover.

Meter boxes of the Strong type are known as *ringless* meter boxes to distinguish them from another well known style called "ring" type meter boxes. In the "ring" type the meter is supported on the outside of the box and secured on a special circular flange on the lid of the box, and secured to the lid or cover by a circular clamp known in the trade as a "sealing ring". The Strong patent emphasized as its principal point of novelty the *elimination* of this sealing ring.[5]

In the Strong patent, and in the later Fisher patent as well, the external sealing ring is eliminated because the meter is plugged in before the cover is applied and then the cover with the hole in it is passed over the meter and latched in place to itself lock or seal the meter in the meter box.

The elimination of the sealing ring to provide a "ringless box" was the principal feature emphasized by the Strong patent.

The Fisher Patent

This patent issued from an application filed by B&C's officer, Fisher, on April 4, 1962. The critical date, one year prior to the filing date, is April 4, 1961. The

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[5] The old sealing ring construction is illustrated in Johansson patent No. 2,297,833 in the Supplemental Appendix (PX 45, 134a, R. 3062). The box is shown in red, the cover in yellow. The cover will be seen to have an external outwardly extending bent back yellow flange 19 (Figures 1 and 2) which supports the meter base rim 20 (colored blue). The conventional sealing ring (uncolored, marked by an arrow and "external sealing ring") is wrapped around the flange 19 on the yellow cover and the blue meter base rim to secure the meter to the box.

Fisher patent is reproduced at pages 189-193 of the Supplemental Appendix . The patentee Fisher *himself admitted* that the meter box of this patent is basically the same as that of the invalid Strong patent, differing therefrom only in the addition of an upper flange 50 on the cover (Figure 3, 189a) which has notches at 70 to straddle the flanged edges of the box and a drain gutter 45 on the inside cover or lid (DX 34a, Fisher Dep. 181a, 183a).[6]

The drain gutter 45, like any other old drain gutter has always done, catches water which leaks into the box through the hole in the cover and directs its flow to holes in the bottom.

COUNTER ARGUMENT TO PETITIONERS' FIRST QUESTION

Petitioners ask this Court to review a wholly confected question which has utterly no relationship to the true facts of this case. They contend that the best evidence rule was ignored because the courts below admitted a photocopy of the invalidating 1949 Electrical South publication (DX 7, 141a, R. 3069).[7] The simple answer to petitioners' first question is that it is predicated upon utterly false premises.

The true fact of the matter is that an original copy of the 1949 Electrical South publication, which had been borrowed by respondent from the publisher, *was made available at the trial and in open court* (116a).

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[6] "Q. The two primary improvements over the Strong patent device, right?

A. Right." (DX 34a, 183a)

[7] This trivial matter was briefed in detail before the Court of Appeals and was again thrashed out in oral argument there. It was raised again by a Petition for Rehearing en banc, which was denied.

Moreover, it is also significant to note that petitioners admitted the authenticity of an enlarged photocopy of the *same* pertinent pages from the Electrical South publication, which comprised defendant's trial Exhibit No. 7 (40a). When the photocopy of Electrical South for January 1949 (Defendant's Trial Exhibit 7) was offered and admitted in evidence at the trial, petitioners did *not* raise the "best evidence rule".

Indeed, the authenticity of the photocopy of the Electrical South publication (DX 7) was also confirmed by petitioners' own witness, Mr. Bell, the business manager of the Electrical South trade publication. On direct examination by *petitioners'* counsel, Mr. Bell, who was the business manager of Electrical South in 1949, testified specifically with respect to the photocopy of the portion of the 1949 Electrical South publication which is DX 7:

> "Q. All right. Now, I show you what is entitled Electrical Product Parade, which apparently is a page from Electrical South for January, 1949, previously identified as Defendant's Exhibit 7, and I want to call your attention first that this exhibit has a lot of numbers put in on the box here, and I ask you if you will be kind enough to examine it.
> A. *Yes, that appeared in our pages.*" [8]

Petitioners' first question reduces to nothing more than a trivial complaint of parties dissatisfied with the decisions of four Federal Judges and is based on a wholly artificial and inaccurate version of the facts. The gross inaccuracy of petitioners' first question warrants denial of the petition under Rule 23-4 of this Court.

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[8] Emphasis supplied throughout unless otherwise indicated.

The Decisions of Both Courts Below Holding the Strong Patent Invalid Because the Patented Strong Meter Box Was Described in the Printed Publication Electrical South for January 1949 Are Supported by Overwhelming Evidence.

The trial Court's finding that the Strong patent was invalidated by this printed publication was supported by overwhelming evidence. The printed publication, "Electrical South for January 1949" (DX 7, 141a) was published well over *two* years before the May 5, 1951 critical date of the Strong patent. This 1949 publication shows, pictures and describes a ringless meter box which is *specifically identified as being designed by the patentee Strong* and states that the meter box was "Manufactured and Distributed by B&C Metal Stamping Company" of Atlanta, Georgia, the plaintiff originating this action.

Because the meter boxes are the same, it is in no way surprising that the idea of Strong—the elimination of the sealing ring as well as the other advantages of the Strong meter box described in the Electrical South publication—are the very same as those set forth in the specification of the Strong patent. This is conclusively demonstrated by the side-by-side comparison of the meter box in the 1949 Electrical South publication and the Strong patent at page 1 of the Addendum to this brief.[9]

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[9] The side-by-side comparison at page 1 of the Addendum sets forth in the left-hand column, below a copy of Figure 1 of the Strong patent drawings, quotations from the specification of the Strong patent (PX 1, 117-119a) describing the essential features and advantages of the patented Strong meter box. In the right hand column below a copy of one of the photographic views of the 1949 Electrical South meter box (strikingly similar, if not identical to Figure 1 of the Strong patent) respondent has quoted the essential features and advantages for the same box as described in Electrical South.

Indeed, the identity of the meter boxes portrayed in the 1949 Electrical South publication and the Strong patent was also confirmed by petitioners' own admissions (40-45a), the testimony of Fisher, petitioners' officer (104-105a), as well as the testimony of defendant's witnesses (45a, 96-101a).

It was established by F.R.C.P. Rule 36, Admissions by Plaintiffs Nos. 1, 2, 11, 12, 15-18, 19, and 21-27 that claims 1 to 3 of the Strong patent read directly upon the Electrical South Publication. (40-45a) Defendant's expert Robillard testified that the publication disclosed the ringless meter box structure defined in claims 1-3 of the Strong patent. (Robillard, 96a-101a). Spencer, an engineer with experience in the manufacture of meter boxes testified that he, or even a model maker in the shop, could with the disclosure of Electrical South construct the meter box of the Strong patent. (Spencer, 45a).

The patentee Strong and the plaintiff B&C, who was also informed during the prosecution of the Strong patent, (Fisher, R. 2903) had an uncompromising duty to disclose all of the pertinent facts—the 1949 Electrical South publication as well as the invalidating commercialization of the Strong meter box with the City of Albany and Georgia Power Company (to be discussed hereafter)—to the Patent Office. But no disclosure was ever made to the Patent Office. See ~~in~~ *Precision Instrument Mfg Co.* v. *Automotive Maintenance Co.*, 324 U.S. 806, 818 (1945).

The courts below found that the Electrical South publication was published with the patentee Strong's knowledge and this coupled with failure to disclose such

publication to the Patent Office furnished one more ground for invalidating the Strong patent. But as they did in the courts below, petitioners continue in this Court to ignore the overwhelming evidence supporting the factual findings of the courts below that the meter box of the Strong patent was described in the printed publication "Electrical South" for January 1949 in violation of 35 U.S.C. § 102(b). Petitioners' efforts to divert attention from the true findings of the courts below are even more apparent from their "second question".

COUNTER ARGUMENT TO PETITIONERS' SECOND QUESTION

Petitioners' second question is but another version of their efforts in the courts below to enlist sympathy for the widow of the patentee Strong, and thereby somehow support ~~of~~ their argument against the acceptance in evidence of the invalidating Electrical South publication (DX 7). Petitioners' second question is only an emotional effort inaccurately and unfairly characterizing the decisions of the courts below.

Specifically, petitioners' description of what the courts below held based on *Marconi* v. *United States,* 320 U.S. 1 (1943) is grossly inaccurate. At pages 5-6 of their brief petitioners seek, as they unsuccessfully did in both courts below, to distinguish *Marconi* because the patentee Fleming there was knowingly claiming something which had been invented by others (Edison) whereas in the present case Strong did not attribute the meter box shown and described in the Electrical South publication to someone else. Such a distinction is without merit.

In *Marconi* this Court condemned holding out to the public as a monopoly patent claims which are known to be of invalid scope. This Court in Marconi stated:

> "For ten years the Fleming patent was held out to the public as a monopoly of all its claimed features. That was too long in the absence of any explanation or excuse for the delay, and hence in this case was long enough to invalidate the patent." (p. 59 of 320 U.S.)

In the present case, the patentee and petitioners secured claims to which they were not entitled, not only because of the 1949 Electrical South publication, but also because of petitioners' *own* invalidating prior sales, placing on sale and public uses involving the City of Albany and the Georgia Power Company. In spite of these known invalidating activities, the claims of the Strong patent were prosecuted in the Patent Office for nine years, and were being held out to the public as a lawful monopoly for eight more years since issuance of the Strong patent. These claims are still the subject of five other pending civil actions.[10] Like *Marconi,* no explanation or excuse has ever been given.

The duty to disclose prior invalidating publications and activities has been recently emphasized in *Beckman Instruments, Inc.* v. *Chemtronics, Inc.,* 428 F. 2d 75 (5th Cir. 1970) *cert. denied* 27 L. Ed. 2d (Dec. 14, 70) where the Fifth Circuit Court of Appeals stated:

> "* * * We conclude that there was no excuse for appellants' failure to disclose Stow's work to the

[10] In the sixth suit, the United States District Court for the Western District of Missouri, Western Division has entered a declaratory judgment of dismissal holding the Strong and Fisher patents invalid and unenforceable with leave to reinstitute the suit in the event the decision of the trial court here is reversed.

> Patent Office, and this conclusion prevents us from considering Beckman's conduct as fulfilling an 'uncompromising duty' of good faith disclosure. We are constrained to hold the patent invalid on this ground, also."

It is conceded that Strong knew of the 1949 Electrical South publication, which completely anticipates claims 1 to 3. Strong secured his patent without revealing this invalidating publication to the Patent Office. The courts below both found the entire patent, including claims 4 and 5, to be invalid. Claims 4 and 5 claim the same ringless meter box combination disclosed in the 1949 Electrical South publication, plus the recitation of a very minute detail—the conducting fingers.[11]

COUNTER ARGUMENT TO PETITIONERS' THIRD QUESTION

Petitioners' third question improperly and erroneously suggests that the courts below did not hold that the boxes of both the Strong and Fisher patents were "on sale" prior to the critical dates for these patents. But the true fact is that the trial court found that the meter boxes of both the Strong and Fisher patents were

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[11] The use of conducting or grounding fingers as required is so old and obvious an expedient in the electrical art that no novelty could properly be asserted therefor. Indeed, two old prior patents, Kempton, 1,967,091 (DX 21) of 1934 show an electrical plug connector with grounding fingers in a receptacle to make a ground when the blades are plugged. Road patent 2,367,433 (DX 9) shows it was old to ground meters to their boxes using grounding fingers (Spencer, 52-54a, 79-80a). See *Dix Seal Corp* v. *New Haven Trap Rock Co.*, 236 F. Supp. 914, 918-921 (D. Conn. 1964); *Gunter & Cook Inc.* v. *Southern Elec. Service Co.*, 256 F. Supp. 639, 649, 652-653 (M.D.N.C. 1966), aff'd. 378 F. 2d 60 (4th Cir. 1967).

"on sale" prior to the respective critical dates for these patents. (Order, June 12, 1969, 19a; Order October 21, 1969, 24a). The Court of Appeals affirmed and adopted these decisions.

Aside from the inaccuracy of the manner in which petitioners' third question is framed, the arguments at pages 7-10 of the petition reveal that as in the Court of Appeals below, petitioners are merely continuing to quarrel with the trial court's findings of fact in an improper effort to retry these findings in this Court. Petitioners also made the same contention in a petition for re-hearing en banc in the Court below, but the petition was denied.

Not only did both courts below find that the patented Strong meter box had been placed on sale by B&C's extensive commercialization of the patented meter box with Georgia Power Company, but both courts also found that the patented Strong ringless meter boxes had *actually been sold* by B&C to the City of Albany, Georgia, prior to the critical date. The invalidating actual sales of the Strong meter boxes to the City of Albany are barely touched on, and then only as an afterthought, at page 10 of the petition. Even petitioners' brief reference to the City of Albany defense is misleading and inaccurate.

There Was Overwhelming Evidence Establishing That the Patented Strong Ringless Meter Boxes Had Been Actually Sold by B&C to the City of Albany Prior to the Critical Date.

After many hours of live testimony from witnesses for both sides with the important opportunity to observe these witnesses and draw inferences, the trial judge resolved the disputed fact issues with respect to the City of Albany defense by finding that *"B&C*

did in fact sell Strong meter boxes to the City of Albany more than one year before the Strong application". (Order, June 12, 1969, 19a)

The trial court's findings which were adopted and affirmed by the Court of Appeals, are supported by overwhelming evidence which included the testimony of Charlie G. Mann, the Meter Superintendent of the City of Albany, Mr. Fisher, an officer of B&C since 1946, as well as official records of the City of Albany of unquestioned authenticity. The evidence at the trial included the following documentary records from the files of the City of Albany, with respect to the purchase of *50* of the Strong meter boxes in 1950 long before the Strong patent's May 5, 1951 critical date:

1. A City of Albany Purchase Order No. 3284 dated April 29, 1950 (DX 10B, 143a) ordering 50 B&C meter boxes No. WV-011 through a local electrical supplier, Electric Equipment Co., at a unit price of $2.48 each; (Mann, 70a; Bierman, 55-56a; Hope, 61-62a)

2. A City of Albany Receiving Report (DX 10C, 144a) showing the receipt on June 9, 1950 by the City of Albany of the 50 B&C meter boxes WV-011 ordered by the April 29, 1950 Purchase Order No. 3284 (DX 10B) (Mann, 70a; Bierman, 56a; Hope, 62-63a);

3. An invoice No. 2441 (DX 10D, 145a) of the local supplier, Electric Equipment Co., to the City of Albany, dated June 6, 1950 for the 50 B&C meter boxes covered by the Purchase Order (DX 10B, 143a) at the purchase order unit price of $2.47 each and a total price of $123.50 (less $2.47 discount); (Bierman, 57a)

4. A City of Albany check voucher dated June 30, 1950 (DX 10A, 142a) showing payment of invoice

No. 2441 (DX 10D, 145a) in the sum of $123.50 (less $2.47 discount) by the City of Albany to Electric Equipment Co. (Bierman, 57a).

Similar records in evidence, and also established by testimony, cover the reordering and sale of *200* of these same B&C meter boxes WV-011, which were delivered to Albany on February 27, 1951. (DX 13, 15a; DX 12B, 147a; DX 14, 151a; DX 12C, 148a; DX 12D, 149a; and DX 12A, 146a; Mann 51a, Bierman, 57-59a, R. 3157-3158, and Hope 63-64a).

The trial court's finding of fact that these B&C No. WV-011 meter boxes sold to Albany were the patented ringless Strong meter boxes also finds overwhelming support both in the testimony of Mann, the Meter Superintendent for the City of Albany since 1932, who was intimately familiar with the B&C meter boxes purchased by Albany and also the testimony of B&C's own officer Fisher. Mr. Mann testified that these 1950-51 meter boxes were "ringless" (Mann, 71a) and were the same as the B&C ringless meter box No. WV-011 shown at page 29 of B&C's catalog (Dx 15, 152a, Mann, 77-78a).

B&C's officer Fisher testified that B&C's catalog No. WV-011 *originated* with the patented Strong ringless meter box and also clearly identified it with the Strong patent. (Fisher 32a-33a)[12]

Each of the actual sales in June, 1950 and again in February 1951 of B&C meter boxes No. WV-011 is prior to the May 1951 critical date and each is sufficient

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[12] E.g. Q. "Isn't it true that WV-011 is the Strong ringless type socket?

A. *"The WV-011 is a Strong ringless socket, yes, sir."* (Fisher, 33a)

in and of itself to invalidate the entire Strong patent. In *Consolidated Fruit Jar Co.* v. *Wright,* 94 U.S. 92 (1877), this Court said:

> "It follows that a *single instance* of sale or of use by the patentee may, under the circumstances, be fatal to the patent."

The gross inaccuracy of petitioners' statement that "the only evidence submitted in support of this defense was two purchase orders dated prior to the critical date of May 4 (sic) 1951 bearing the indicia 'WV-011,' " (Petition, p. 10) justifies denial of the Petition.

In view of the overwhelming documentary evidence and testimony supporting the trial court's finding that "*B&C did in fact sell* Strong meter boxes to the City of Albany more than one year before the Strong patent application was filed" (Order, June 12, 1969, 19a) petitioners' statement at pages 10 of the Petition that "There is no evidence that petitioners engaged in any commercial or competitive exploitation of its meter boxes prior to the critical dates" is both inaccurate and incredible.

It is also obvious that these Strong meter boxes were being used in the usual course of business by the City of Albany. After the first delivery of *50* boxes in June 1950 Albany found it necessary to reorder *200* more of these same boxes in November 1950. As Mann testified, "when the stock is down so low, they have to reorder." (Mann, 69a)[13]

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[13] The evidence also included two official City of Albany Work Orders (DX 16 and 17; 153a, 155a) which establish that on October 23, 1950, electrical service was installed at two houses, 1312A and 1312B Whitney Street, Albany, Georgia, by the plugging in of a socket type electric meter into each of two meter boxes which were installed on these houses. Defendant's Exhibits 19A, 19B, 19C and 19D (157-160a) are photographs showing the meter boxes in-

In assessing the credibility of the witnesses and weighing the evidence in making his detailed findings of fact, the trial judge also had before him petitioner's admission that on March 5, 1951, B&C delivered *98* ringless meter boxes with the same catalog number, No. WV-011 to Georgia Power Company. Petitioners admitted that these *were* the ringless meter boxes of the Strong patent. (Fisher 106a, 108a). The delivery of these 98 meter boxes on March 5, 1951 to Georgia Power was *only six days* after the February 27, 1951 delivery to Albany of B&C meter boxes designated by the identical catalog No. WV-011.

Both Courts below held the Strong patent invalid because of B&C's sales of the Strong meter box to Albany in 1950 and February 1951. B&C's further commercialization of the Strong meter box with Georgia Power Company prior to the critical date simply furnished still another separate ground upon which both Courts also held the Strong patent invalid.

The Strong Patent Was Also Held Invalid Because of B&C's Further Commercialization of the Patented Strong Meter Box WV-011 With Georgia Power Company Prior to the May 5, 1951 Critical Date. Overwhelming Evidence Supports the Finding That the Boxes Were Placed "On Sale" Prior to the Critical Date.

After the actual sales to the City of Albany in June 1950 and February 1951, *over five hundred* B&C ringless meter boxes No. WV-011 were delivered to the

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stalled on these houses at 1312A and 1312B Whitney Street (Mann, 75-76a). Mann said that Albany was issuing the same type meter boxes as those shown in the photographs (DX 19-A-D), at the time of the installation in October 1950, and he identified these boxes as B&C ringless meter boxes No. WV-011. (Mann, 76-77a) It is both common and expected for meter boxes installed in 1950, and even earlier, to be in service at the present time. (Mann, R. 3295-3296; See also Fisher, R. 2846)

Georgia Power Company by B&C in March and April 1951, well prior to the May 5, 1951 critical date for the Strong patent.

Whitmer, Manager of Purchases and Supplies for Georgia Power testified that these March and April deliveries were recorded in the usual course of business on the standard stock records of Georgia Power (DX22, 163a; DX23, 164-165a) and were in partial fulfillment of an order for 1280 meter boxes. (Whitmer 83-84a; 93-94a). Similar subsequent periodic shipments were received by Georgia Power until the order was completed on October 18, 1951 (Whitmer 83a, 93a). There is no dispute that all of these were the patented Strong meter box. Fisher testified that these boxes embodied the alleged meter box invention of the Strong patent, including even the little "conducting fingers." (Fisher 106a, 108a).

During March and April 1951, 61 of these patented Strong meter boxes No. WV-011 (along with other ordinary stock materials) were withdrawn in the customary manner, using standard Material and Supply Request forms (DX 24, 25, 26, 27 A-D, 166-173a) from Georgia Power's warehouse stock by various Georgia Power divisions in Columbus, Atlanta, Rome, Macon, Americus, Tifton, Manchester and Albany, Georgia, for use in supplying electrical service to customers. (Whitmer 88-93a).

The Trial Court found:

> "The evidence clearly shows that B&C Metal Stamping Co. (the first exclusive licensee) considered the Strong meter box to be marketable and *was in fact making great efforts to sell the boxes to Georgia Power* and to others as well." (Order, June 12, 1969, 19a)

> "The court finds that *B&C did in fact sell* Strong meter boxes to the City of Albany more than one year before the Strong patent application was filed and that it delivered meter boxes to Georgia Power Company *to be used* in whatever manner that company chose, *without restriction.*" (Order, June 12, 1969, 19a)
>
> "The Court holds, therefore, that either the City of Albany or the Georgia Power Company transactions would be sufficient to establish that *the Strong meter boxes were on sale* as well as in public use prior to May 5, 1951 . . . ." (Order, June 12, 1969, 19a)

Petitioners unsuccessfully argued in both courts below that all of these Strong meter boxes were delivered for "experimental" purposes and were given rather than sold to Georgia Power. In their petition, petitioners now merely assert that the meter boxes were "given" to Georgia Power and do not even allege their purpose to have been experimentation.[14] There is utterly no merit in Petitioners' gift contention.

The purely commercial character of B&C's delivery of hundreds of Strong meter boxes which were treated by B&C's customer, Georgia Power like other ordinary stock item and widely distributed in the usual course of business to Georgia Power's field offices for use in supplying electrical service to customers, was clearly established by the testimony of B&C's own officers Fisher and Crowe.

The testimony of Crowe, B&C's President and in charge of B&C's sales established that it was customary in selling meter boxes to solicit trade from prospec-

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[14] No evidence of any experimentation was ever offered by petitioners in the courts below. See *Smith & Griggs Mfg. Co.* v. *Sprague,* 123 U.S. 249, 31 L. Ed. 141, 146 (1887).

tive utility customers by displaying or submitting samples of such meter boxes to secure approval so that the seller will be placed on the utilities approved list. (Crowe 113a, "I don't care what you're selling the first thing you've got to do is get on the approved list." 114-116a)[15]

In January, 1951, Fisher, was "out after new business" and went to Jim Raney, who was in charge of Georgia Power's meter department with the ringless meter box of the Strong patent for the purpose of securing "business" from Georgia Power. (Fisher 106-107a) Since Georgia Power was one of the largest utilities in the south, Fisher said, "we knew if we could do business with the Power Company, that some of the other utilities certainly would follow suit." (Fisher 107a)

There can be no real doubt that B&C's *purpose* in delivering more than 500 of the Strong meter boxes to Georgia Power was commercial, i.e., *to sell meter boxes.*

At the same time Fisher was soliciting Georgia Power's business, Crowe, B&C's chief salesman, was displaying and offering samples of the same ringless meter box of the Strong patent to other prospective utility customers. (Crowe, 113-114a) Crowe succinctly characterized B&C's commercial purpose in delivering the Strong meter boxes (or sockets as they are also known) to Georgia Power when he testified "We wanted them to *buy* sockets . . . . " (Crowe 116a)

The words of petitioners' counsel at the trial, in themselves, conclusively support the findings of both

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[15] Of course, this custom of submitting samples is likewise applicable to the invalidity of the Fisher patent, discussed hereinafter.

courts below that the Strong patent is invalid because the Strong meter boxes were "on sale."

> "The Court: I get the impression from Mr. Fisher and Mr. Crowe that *they badly wanted to peddle some boxes to Georgia Power Company.*
> Mr. Ames: *Right. They wanted to peddle boxes anywhere they could.* And they wanted to get on the approved list for *purposes of sale.*" (116a)

The Meter Box of the Fisher Patent 3,123,744 Was Also Commercialized by Plaintiff B&C More Than One Year Prior to the Filing Date of Its Application. It Is Invalid for Essentially the Same Reasons Which Were Fatal to the Strong Patent.

As noted earlier in this brief, the Fisher meter box is nothing more than the Strong meter box with the addition of a notched upper flange 50 and drain gutter 45 on the Strong cover.

Both courts below found that the same pattern of commercial acts had been engaged in by B&C with the Fisher meter box as had occurred with its earlier version, the Strong meter box.[16] Specifically, petitioners admitted and the trial court found that the samples of the patented Fisher meter box "were given to Duke Power Company for the express purpose of getting them put on Duke's approved list so that Duke would *purchase* boxes of that type from B&C". (Order, October 21, 1969, 24a)

The trial court also found that petitioners delivered these Fisher meter boxes to Duke Power for "unrestricted use in March 1961, 13 months before" the

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[16] The petition states that the facts with respect to the delivery of the Strong meter box to Georgia Power are substantially the same as the transfer of the Fisher meter boxes to Duke Power Co. (Petition, p. 8)

Fisher application was filed and petitioners' delivery of the boxes for the purpose "of having the boxes approved—a necessary prerequisite to Duke purchasing the boxes"—constituted placing the boxes *on sale.* (Order, October 20, 1969, 24a, 26a)

As discussed earlier in this brief, petitioners' officer Crowe, who was in charge of sales and who delivered these Fisher meter boxes to Duke Power, admitted that the purpose in delivering samples was to sell meter boxes. Crowe testified at his deposition (DX 35, 18-19):

> Q. "Of course, that is the reason for taking samples around, you—
> A. Absolutely.
> Q. —*Want to make a sale,* don't you?
> A. *Yes.*"

This customary selling practice in the utility trade, which is no different than the familiar customer try-ons of clothing in a haberdashery, or the potential purchaser's test drive of an automobile, was also confirmed by Crowe's testimony at the trial. (Crowe, 113-116a)

Duke became B&C's largest customer for these Fisher meter boxes. (Crowe Dep. DX 35, pp. 3-4, 186a) Petitioners admit that without doubt the Fisher boxes were placed on Duke Power's approved list. (Petition, p. 8)

These unchallenged facts conclusively establish that the Fisher meter box, just as the Strong meter box with Georgia Power, was placed on sale prior to the April 4, 1961 critical date for the Fisher patent.

See *Chicopee Mfg. Corp.* v. *Columbus Fiber Mills,* 165 F. Supp. 307 (N.D. Ga. 1958) "The statutory language is 'on sale' not 'sold'. Accordingly, an actual

sale is not necessary"; *Minnesota Mining & Manufacturing Co.* v. *Kent Industries,* 247 F. Supp. 993, 999 (D. Mich. 1967) "A free sample or offer for sale is also within the 'on sale' provision of the statute", *aff'd.* 409 F.2d 99 (6th Cir. 1969). See also *Dalby* v. *Lynes,* 64 Fed. 376, 378 (C.C. Mass. 1894) and *Philco Corp.* v. *Admiral Corp.,* 199 F. Supp. 797, 816 (D. Del. 1961) where display of samples was "competitive use".

This is precisely the same kind of commercial activity which plaintiffs engaged in with respect to the Strong meter box prior to the critical date for that patent.[17]

In this regard it is also noted that petitioners, for the very first time in the long and extensive record in this case, try to suggest that the Fisher meter boxes delivered to Duke Power and the Strong meter boxes delivered to Georgia Power were "incomplete" because they did not include the electric meters. (Petition, pp. 7-8). Any such contention is utterly lacking in merit and contrary to the record in the courts below. The alleged invention of both the Strong and Fisher patents related only to the meter box and had nothing whatever to do with the electric meter itself which is a standard and conventional device. Petitioners' counsel conceded this in the following colloquy with

[17] At page 9 of their petition, petitioners cite *Amerio Contact Plate Freezers, Inc.* v. *Belt-Ice Corp.,* 316 F.2d 459 (9th Cir. 1963) wherein the crucial finding of fact upon which the decision of the court turned, was that a freezer machine embodying the patented invention had *not been constructed* prior to the critical date. Unlike *Amerio,* both the patented Fisher meter boxes and the patented Strong boxes in the present case were fully completed and delivered to Duke Power and Georgia Power prior to the critical dates.

the trial judge regarding a conventional *electric meter* (PX 10):

> Q. "Mr. Fisher, I hand you what's been identified as Exhibit 10 for identification . . ."
> The Court: Mr. Ames, is there any contention that this in any way portrays or represents or—
> Mr. Ames: *No.*
> The Court: —the invention involved in this case?
> Mr. Ames: *None whatsoever.*
> The Court: You're just showing what a meter is in general?
> Mr. Ames: Right. This is a meter. The invention is *strictly the box* that the meter goes in." (R 2810)

During the six-day trial on the Strong patent, the District Court not only became thoroughly familiar with the meter box subject-matter, but also with the admitted pattern of petitioners' commercial activities, namely, its customary sales procedure of delivering samples of the meter boxes *which it wishes to sell* to its respective utility customers. There can be no question about petitioners' purpose in delivering these samples. It was the pure business purpose *to sell meter boxes.*

The commercial character of Crowe's delivery of the sample Fisher meter boxes to Duke Power is also confirmed by the fact that they were delivered by Crowe, B&C's chief *salesman.* Crowe testified at the trial he was not an engineer, but that his job was to "try to sell" (Crowe, 113a).

In the case of both patents, the trial court found that the respective meter boxes had been placed on sale prior to the critical dates. There was substantial evidence supporting these findings and the Court of Appeals affirmed.

CONCLUSION

There should be an end to this protracted litigation. This case has been pending for over five years, and five other actions on the same invalid patents are pending in the trial court below awaiting the final disposition of this suit.

The Strong patent is invalid on *any one* of the defenses (Albany, Georgia Power and the Electrical South publication) each of which both courts below found to be fatal to its invalidity.

The Fisher patent which in effect repatents the same box as that of Strong, plus two non-inventive and trivial features (notched flange on the lid and drain gutter), was held invalid by both courts below because the Fisher box was also on sale to Duke Power more than a year before Fisher's application.

The trial court's decision was based on extensive factual findings and the application of well established principles of law. In a per curiam decision the Court of Appeals adopted and affirmed the district court's "cogent opinions."

Respondent respectfully submits that the decision reached by both courts below was entirely just and involves no error nor misapplication of the law, nor any conflict between decisions of different Courts of Appeal nor any question of possible interest or importance which should absorb the time of this Court.

It is submitted that the Petition should be denied.

Respectfully submitted,

JOHN W. MALLEY
EDGAR H. MARTIN

ADDENDUM

THE STRONG PATENT

ELECTRICAL SOUTH FOR JANUARY 1949

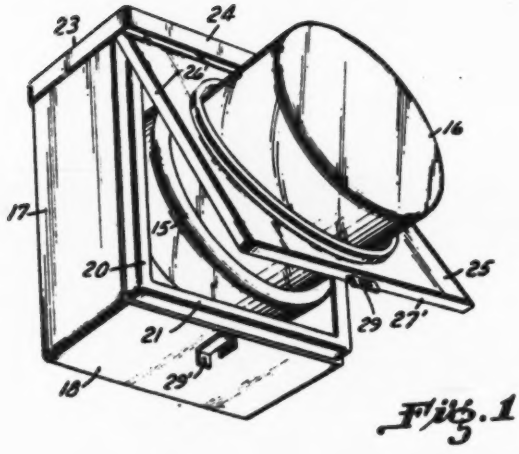
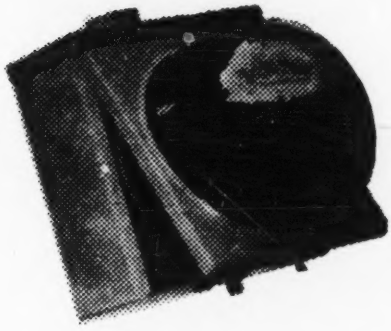


Fig. 1



Patentee: "Carll W. Strong

"An object of my invention is to provide a meter box in which a socket type meter is fastened in place in the box by means of a friction flange and the front of the meter box, and *no separate sealing ring is needed.*" (Col. 1, lines 29-32)

"Another object of my invention is to provide a meter box which *will permit the use of any type of socket meter,* will make *installation easier,* render the meter box *more accessible for inspection, provide more wiring space* and *permit the installation of larger conduit* than is possible with the meter boxes in use today." (Col. 1, lines 36-41)

"Designed by Carll W. Strong

"The *Elimination of the sealing ring* is one of the outstanding advantages of this new line of socket-type meter enclosures. . . . In this design, for which patents are now pending, *the meter is sealed securely in place by the cover which rests firmly against the meter base rim.*"

"Among the advantages claimed for this new box by its manufacturers are: *more wiring space* and *easier installation, better accessibility for inspection, suitable for use with any type of socket meter, allows use of larger conduits* when desired, and completely *eliminates the use of socket ring* and supporting bar used in some other socket type meter enclosure."